

Message Text

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ORIGIN L-03

INFO OCT-01 EUR-25 IO-13 ISO-00 DLOS-06 COA-02 EB-11 OIC-04

CIAE-00 DODE-00 PM-07 H-03 INR-10 NSAE-00 NSC-10

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C O N F I D E N T I A L STATE 191304

E.O. 11652: GDS

TAGS: PBOR, ETRN, UR

SUBJECT: LOS ISSUES FOR IMCO MARINE POLLUTION CON-
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REFERENCE, LONDON, OCTOBER 1973

REF: (A) LONDON 10202; (B) STATE A-7576 SEPT. 4,
1973

1. SUMMARY. DEPT. WISHES COOPERATE WITH SOVIETS AT SUBJECT CONFERENCE IN ORDER ENSURE SUCCESSFUL OUTCOME CONSISTENT WITH ENVIRONMENTAL CONCERNS AS WELL AS NAVIGATIONAL AND OTHER LOS INTERESTS. WE BELIEVE CAREFUL ADVANCE PLANNING REQUIRED IN CONNECTION WITH TWO MAJOR ISSUES: (A) JURISDICTION OF INDIVIDUAL STATES TO PRESCRIBE AND ENFORCE STANDARDS AND (B) EXEMPTION OF MILITARY AND PUBLIC VESSELS FROM TERMS OF THE CONVENTION. EMBASSY IS REQUESTED TO APPROACH LOS OFFICIALS IN MFA TO MAKE POINTS OUTLINED. BASIC PURPOSE OF APPROACH IS TO IMPRESS UPON SOVIETS THE IMPORTANCE OF THE CONFERENCE, THE DANGER TO ITS SUCCESS PRESENTED BY CERTAIN ISSUES AND THE DESIRABILITY OF THEIR HAVING FLEXIBILITY ON THOSE ISSUES. PARAS 2-7 DEAL WITH JURISDICTION. PARAS 8-11 DEAL WITH MILITARY/PUBLIC VESSEL EXEMPTION. END SUMMARY.

2. BEGIN UNDERSCORE JURISDICTION. END UNDERSCORE. ON QUESTION OF JURISDICTION TO PRESCRIBE STANDARDS, DURING SUMMER SESSION OF SEABED COMMITTEE, U.S. ADVOCATED THAT VESSEL POLLUTION CONTROL STANDARDS SHOULD BE INTERNATIONALLY AGREED AND THAT INDIVIDUAL STATES SHOULD BE AUTHORIZED TO PRESCRIBE HIGHER STANDARDS IN ONLY TWO SITUATIONS: PORT STATES FOR VESSELS ENTERING THEIR PORTS AND FLAG STATES FOR VESSELS FLYING THEIR FLAGS (SEE P. 15, REF B). MANY COASTAL STATES ARGUED THAT THEY SHOULD HAVE RIGHT TO PRESCRIBE HIGHER STANDARDS IN A LARGE AREA, USUALLY A 200-MILE ZONE, OFF THEIR COASTS. SOVIET UNION WANTS RIGHT TO PRESCRIBE HIGHER STANDARDS IN ITS TERRITORIAL SEA AND FOR ITS FLAG VESSELS BUT APPARENTLY OPPOSES SUCH A RIGHT FOR STATES FOR VESSELS USING THEIR PORTS.

3. ON QUESTION OF ENFORCEMENT, IN SEABED COMMITTEE, U.S. ADVOCATED FLAG AND PORT STATE COMPETENCE WITH CERTAIN EXTRAORDINARY COASTAL STATE RIGHTS (SEE P. 16, REF B)
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AND COASTAL STATE ENFORCEMENT IN THE TERRITORIAL SEA. COASTAL STATES SUPPORTED ENFORCEMENT RIGHTS IN A ZONE WHILE SOVIET UNION OPPOSED COASTAL STATE RIGHTS BEYOND TERRITORIAL SEA AND ALSO OPPOSED PORT STATE RIGHTS.

4. IN ORDER TO SOLVE THESE PROBLEMS, U.S. WILL, ON ENFORCEMENT, FOR EXAMPLE, IN IMCO, FAVOR FLAG STATE ENFORCEMENT AGAINST VESSELS FLYING ITS FLAG, PORT STATE ENFORCEMENT AGAINST VESSELS WHICH ENTER ITS PORTS REGARDLESS OF WHERE VIOLATION TOOK PLACE (TERRITORIAL SEAS OR HIGH SEAS) AND NEUTRAL FORMULATION ON COASTAL STATE RIGHTS (E.G. WITHIN ITS JURISDICTION) TO LEAVE ISSUES OPEN FOR RESOLUTION AT LOS CONFERENCE.

5. DEPT CONCERNED THAT THESE ISSUES COULD PRODUCE STALEMATE AT IMCO CONFERENCE FOR FOLLOWING REASONS:

(A) DEVELOPING COUNTRIES AND OTHERS MAY ATTEMPT DEFINE COASTAL STATE RIGHT TO PRESCRIBE HIGHER STANDARDS IN A 200-MILE ZONE BEYOND THE TERRITORIAL SEA;

(B) DEVELOPING COUNTRIES MAY ATTEMPT DEFINE COASTAL STATE ENFORCEMENT RIGHTS IN A 200-MILE ZONE OR MAY OPPOSE AGREEMENT ON ANY ENFORCEMENT RIGHTS INCLUDING THOSE OF FLAG AND PORT STATES;

(C) SOVIET REPS TOLD U.S. DELOFFS DURING JULY/AUGUST SEABED COMMITTEE SESSION THAT IMCO SHOULD SETTLE ALL JURISDICTION ISSUES RELATING TO VESSEL POLLUTION AND THAT THEY WOULD SUPPORT PRESCRIPTIVE AND ENFORCEMENT RIGHTS FOR FLAG STATES AND FOR COASTAL STATES IN TERRITORIAL SEA. SOVIET DEL SAID THEY WOULD OPPOSE PORT STATE RIGHTS AND COASTAL STATE RIGHTS BEYOND TERRITORIAL SEA.

6. DEPT FEELS ONLY WAY TO AVOID STALEMATE AND POSSIBLE FAILURE OF IMCO CONFERENCE IS TO PRESERVE QUESTIONS OF COASTAL STATE RIGHTS FOR RESOLUTION BY LOS CONFERENCE. U.S. WILL BE EXPLORING THIS IDEA WITH CANADA (A LIKELY LEADER OF COASTAL STATE GROUP) PRIOR TO CONFERENCE. ALSO, ISSUE WILL BE DISCUSSED IN LONDON MEETING PRIOR TO CONFERENCE WHICH WILL INCLUDE U.S., U.S.S.R. AND OTHER MARITIME STATES.
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7. EMBASSY SHOULD USE FOLLOWING ARGUMENT:

(A) U.S., U.S.S.R. AND OTHER MARITIME STATES HAVE BASED ARGUMENTS TO RESTRICT COASTAL STATE PRESCRIPTIVE RIGHTS ON EFFECTIVENESS OF INTERNATIONAL STANDARDS. SUCCESSFUL IMCO CONFERENCE ESSENTIAL IF THESE ARGUMENTS ARE TO HAVE ANY FORCE AND PERSUASIVE EFFECT IN AVOIDING COASTAL STATE PRESCRIPTIVE RIGHTS IN A ZONE BEYOND THE TERRITORIAL SEA.

(B) ALL STATES, OTHER THAN U.S.S.R., WANT TO SETTLE JURISDICTION ISSUES IN LOS FORUM, NOT IN IMCO. WE DO NOT BELIEVE IMCO CONFERENCE WILL BE MORE FAVORABLE VOTING FORUM SINCE MANY DEVELOPING STATES WILL BE AT IMCO CONFERENCE AND 2/3 REQUIREMENT FOR ADOPTION MAY PRODUCE STALEMATE AT BEST. MOREOVER, IT IS CLEAR THAT LOS CONFERENCE LIKELY TO ADDRESS JURISDICTIONAL ISSUES IRRESPECTIVE OF WHAT IMCO DOES, PARTICULARLY IN VIEW OF ATTACKS ON IMCO AT SEABED COMMITTEE.

(C) PRESERVATION OF ISSUES FOR LOS WOULD ALLOW RESOLUTION IN CONTEXT OF ALL OCEANS JURISDICTIONAL ISSUES WHICH COULD PRODUCE BETTER RESULT THAN ATTEMPTED RESOLU-

TIONS OF SINGLE ISSUE IN IMCO CONFERENCE WHERE MARITIME STATES COULD WELL BE IN A MINORITY AND OPPONENTS WILL HAVE NO INCENTIVE TO COMPROMISE.

(D) DIRECT CONFRONTATION ON JURISDICTION ISSUES IN IMCO COULD HAVE EFFECT OF HARDENING COASTAL STATE POSITION ON COASTAL JURISDICTION IN A ZONE, THUS PERHAPS PRODUCING SPILLOVER EFFECT TO OTHER LOS ISSUES AND MAKING THEM MORE DIFFICULT TO NEGOTIATE.

(E) EFFECTIVE ENFORCEMENT SCHEME NEEDED FOR IMCO CONVENTION SINCE IT WILL PROBABLY COME INTO FORCE PRIOR TO ENTRY INTO FORCE OF LOS CONVENTION. THUS U.S. SUPPORTING FLAG AND PORT STATE ENFORCEMENT WHICH U.S. VIEWS AS BEING COMPATIBLE WITH PRESENT INTERNATIONAL LAW. FLAG STATE ENFORCEMENT HAS LONG BEEN ACCEPTED. PORT STATES CAN TAKE ENFORCEMENT MEASURES REGARDLESS
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OF WHERE VIOLATION TOOK PLACE ON THEORY THAT PORT STATE CAN ATTACH ANY CONDITION TO PORT ENTRY INCLUDING CONSENT OF VESSEL TO SUBMIT TO ENFORCEMENT PROCEDURES.

8. BEGIN UNDERSCORE MILITARY EXEMPTION. END UNDERSCORE. DURING THE U.N. SEABED COMMITTEE MEETING IN NEW YORK LAST SPRING, U.S. REPS HELD DISCUSSIONS WITH COL. P.D. ARABOLYA OF SOVIET MOD, AND AGAIN AT SUMMER SEABED MEETING IN GENEVA WITH BOTH COL. BARABOLYA NA AND MR. NASINOVSKIY OF SOVIET MFA, ON TEXT OF PROPOSED IMCO CONVENTION. PRIMARY ATTENTION DEVOTED TO ARTICLE 3(2) OF IMCO FIFTH DRAFT, AND CHOICE OF SPECIFIC LANGUAGE BY WHICH PUBLIC VESSELS WOULD BE EXEMPT FROM CONVENTION REQUIREMENT.

9. AFTER PRESENTATION OF U.S. VIEWS ON RELATIVE MERITS OF MILITARY AND/OR PUBLIC VESSEL EXEMPTION CLAUSES FOUND IN EXISTING IMCO AND RELATED TREATIES, SOVIET REPRESENTATIVE STATED HE TENDED TO FAVOR U.S. VIEW THAT LANGUAGE CONTAINED IN ARTICLE VII(4) OF OCEAN DUMPING CONVENTION WAS, FROM BOTH SUBSTANTIVE AND TACTICAL VIEWPOINT, BEST WAY TO ACHIEVE U.S. AND SOVIET OBJECTIVE OF EXEMPTION FOR ALL PUBLIC VESSELS, INCLUDING MILITARY VESSELS, AND WOULD HAVE THE MATTER REVIEWED IN MOSCOW. AT SUMMER SESSION SOVIET REPRESENTATIVES AFFIRMED THEY WERE FULLY IN SUPPORT OF LANGUAGE IN OCEAN DUMPING CONVENTION AND WOULD ENDEAVOR TO HAVE SUCH LANGUAGE ADOPTED IN LONDON.

10. EARLY THIS SUMMER SOVIETS SUBMITTED TO IMCO COMMENTS AND PROPOSALS ON FIFTH DRAFT OF POLLUTION CONVENTION. SOVIET COMMENTS PUBLISHED BY IMCO AS DOCUMENT MP/CONF/8/8 DATED 4 JULY 1973. SOVIET COMMENTS ON PRESENT

DRAFT MILITARY EXEMPTION CLAUSE DO NOT RPT NOT REFLECT
SOVIET INTENTIONS REPORTED ABOVE.

11. FYI: LANGUAGE REFERRED TO IS AS FOLLOWS:

(A) ARTICLE VII, CLAUSE 4 OF THE OCEAN DUMPING
CONVENTION:

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"4. THIS CONVENTION SHALL NOT APPLY TO THOSE
VESSELS AND AIRCRAFT ENTITLED TO SOVEREIGN IMMUNITY
UNDER INTERNATIONAL LAW. HOWEVER, EACH PARTY SHALL
ENSURE BY THE ADOPTION OF APPROPRIATE MEASURES THAT SUCH
VESSELS AND AIRCRAFT OWNED OR OPERATED BY IT ACT IN A
MANNER CONSISTENT WITH THE OBJECT AND PURPOSE OF THIS
CONVENTION, AND SHALL INFORM THE ORGANIZATION ACCORDINGLY."
(REFERENCE TO AIRCRAFT WOULD BE DELETED IN IMCO
CONVENTION).

(B) ARTICLE III, CLAUSE (2) OF THE IMCO 5TH DRAFT:

"(2) THE PRESENT CONVENTION SHALL NOT APPLY TO
ANY WARSHIP OR OTHER SHIP OWNED OR OPERATED BY A STATE
AND USED FOR THE TIME BEING, ONLY ON GOVERNMENT NON-
COMMERCIAL SERVICE. HOWEVER, SUCH CONTRACTING STATE
SHALL ENSURE BY THE ADOPTION OF APPROPRIATE MEASURES
THAT SUCH SHIPS OWNED OR OPERATED BY IT ACT IN A MANNER
CONSISTENT WITH THE OBJECT AND PURPOSE OF THE PRESENT
CONVENTION."

(C) U.S.S.R. COMMENTS AND PROPOSALS ON ARTICLE III,
CLAUSE (2) OF THE IMCO CONVENTION (MP/CONF/8/8):

"BEGIN UNDERSCORE. PARAGRAPH. 2. END UNDERSCORE

1. THE WORDS "AND NAVAL AUXILIARY" TO BE INSERTED
AFTER THE WORDS "TO ANY WARSHIP". THE INSERTION WILL NOT
ENLARGE THE NUMBER OF SHIPS TO WHICH THE CONVENTION SHALL
NOT APPLY, BUT FROM OUR VIEWPOINT, MAKES THE WORDING
MORE PRECISE.

2. THE WORDS "FOR THE TIME BEING" TO BE DELETED.
END FYI.

12. REQUEST EMBASSY CONTACT APPROPRIATE MFA OFFICIALS
TO DISCUSS THESE QUESTIONS. EUGENE N. NASINOVSKY, LEGAL
AND TREATY DEPT., WAS SOVIET REP ON POLLUTION ISSUES
AT SEABED COMMITTEE. HOWEVER, HE WAS UNCOMPROMISING ON
ISSUES STATED ABOVE AND HIS HARD-LINE TACTICS MADE
NEGOTIATIONS MORE DIFFICULT. IF OLEG KHLESTOV RETAINS
LOS RESPONSIBILITIES, DEPT RECOMMENDS THAT HE BE CONTACTED,
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PARTICULARLY SINCE HE PROBABLY AWARE OF PROBLEM THROUGH MAZLOV (SEE REF A). ALSO, MAY BE USEFUL TO SUGGEST THAT J.T. MATOV, DEPUTY CHIEF, ADMINISTRATION OF SCIENCE AND TECHNOLOGY, MINISTRY OF MERCHANT MARINE, BE INCLUDED. OUR INFORMATION IS THAT HE WILL BE NUMBER TWO ON DELEGATION WITH A MINISTER OR DEPUTY MINISTER HEADING IT. IN ADDITION TO MAKING OTHER POINTS, EMBASSY SHOULD STRESS IMPORTANCE OF HAVING INDIVIDUAL ON IMCO DELEGATION WHO IS KNOWLEDGEABLE ON LOS (WE UNDERSTAND NONE TO BE INCLUDED AT PRESENT). FYI: NASINOVSKY WOULD NOT RPT NOT BE HELPFUL END FYI. IF NOT, REPEAT NOT POSSIBLE TO INCLUDE SOMEONE KNOWLEDGEABLE ON LOS, SOVIETS SHOULD UNDERSTAND THAT JURISDICTION AND EXEMPTION ISSUES WILL PROBABLY BE NEGOTIATED QUIETLY IN CORRIDORS AND THUS SOMEONE SHOULD BE WELL-BRIEFED ON PROBLEM. RUSH

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<< END OF DOCUMENT >>

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